

Approved March 2, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

12:40 ~~am~~ p.m. on February 23, 1988 in room 254-E of the Capitol.

All members were present except:

Senator Paul Burke - Excused

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Legislative Research Department
Mary Allen, Secretary to the Committee

Conferees appearing before the committee:

Harland Priddle, Secretary, Kansas Department of Commerce
Mark Burghart, Kansas Department of Revenue

The meeting was called to order at 12:40 p.m. by the Chairman, Senator Wint Winter, Jr.

Senate Bill 470 - An Act concerning Kansas basic enterprises and Kansas basic industries; providing a means of identification thereof for economic development purposes.

Chairman Winter called for Committee discussion on and consideration of SB 470, the act which helps define Kansas basic enterprise and, to some extent, which attempts to apply that definition to certain programs. The Chairman called on Harland Priddle, Secretary of the Kansas Department of Commerce (KDOC), to comment on any concerns or suggestions which he might have on SB 470. Secretary Priddle said that amendments which previously were suggested to the Committee were not meant in any way to change or amend anything which the KDOC is doing now. He observed that the suggested amendments are intended to allow KDOC to "do" businesses that are not necessarily basic industries. He emphasized that KDOC does not want to change its mission.

Secretary Priddle stated that he asked his staff to research the implications of who and who would not receive credits under the provisions of SB 470. (See Attachment I entitled "Potential for Incentives".) He said that he is concerned that someone might think that the state feels that small business is not important. He emphasized that this is not the case for the state is interested in small business. The Chairman asked Secretary Priddle if he feels that it is good public policy for the state to continue to provide the tax incentives to service industries, such as restaurants, barber shops and grocery stores. The Secretary said that this question gets into the issue of scarce resources. If the state has scarce resources, it should target them against the basic industries.

The Chairman said that the Department of Revenue (DOR) previously had expressed some concerns about Sections 39 and 40 of SB 470. He stated that these sections attempt to utilize the definitions in the bill to limit certain existing programs, in this case tax credit programs. The DOR expressed concern about administration of the program if the new definition of basic enterprise is used. The Chairman called on Mark Burghart, General Counsel for the DOR, to present some suggested amendments to SB 470 which would address these administrative concerns. Mr. Burghart passed out copies of the DOR's suggested amendments to Section 39 of SB 470. (Attachment II) He said that the proposed amendments address what the DOR believes to be some administrative problems which the Department would encounter if the Legislature adopts the definition of Kansas basic industry for Kansas tax purposes. He stated that the DOR proposes that the current definition be kept of revenue producing enterprise under the Job Expansion and Investment Credit Act. The DOR is suggesting adding one additional criteria which would basically mean that a business would have to qualify under existing law under the current definition of revenue producing enterprise and in addition, at least fifty-one percent of the business' gross receipts would have

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,
room 254-E, Statehouse, at 12:40 ~~am~~/p.m. on February 23, 1988

to be derived from out of state sources.

The Chairman asked the Committee to address itself to the amendments to SB 470 requested by the Kansas Department of Commerce. Senator David Kerr stated that it was not the intention of the Joint Committee on Economic Development to prevent the KDOC from providing advisory type services to businesses which are not classified as Kansas basic industries. The KDOC's proposed amendments would allow it to provide those services which it has traditionally offered.

Senator David Kerr moved that SB 470 be amended by the adoption of the amendments suggested by the Kansas Department of Commerce. (Attachment III) Senator Salisbury seconded the motion. The motion carried.

Senator Fred Kerr stated that when considering SB 470, the Committee is addressing major policy on the tax issue. He said that he feels that there will be some people missed in providing tax credits by the proposed language in the bill or the DOR's clarification. He noted that he is referring to some small, manufacturing type industries that probably first start out by selling a majority of their products to Kansas customers. He observed that as these businesses expand they might become fifty-one percent out-of-state businesses, but initially they would not be. He said that these businesses could well decide to start their business in a surrounding state rather than in Kansas. He said that he can see the argument against providing these types of tax incentives to retailers that are going to be in business anyway.

Senator Hayden moved that SB 470 be amended by striking all of New Section 1 and by renumbering the remaining sections. Senator Salisbury seconded the motion. The motion carried.

Following comments by Committee members, Chairman Winter said that he interprets the comments as general favor for the concept of identifying Kansas basic enterprise. He asked Senator Fred Kerr, Senator Gerald Karr and Senator David Kerr to meet with representatives of the Department of Revenue to try to identify an administrative way to narrow the tax credit provisions in SB 470.

The meeting was adjourned at 1:30 p.m. by the Chairman.

GUEST LIST

NAME

REPRESENTING

MARK A. BURGHART

REVENUE

JACK MONTGOMERY

KDOC

JERRY CONNOR

KG's E

Debbie Zabel

IPPR Univ. of Ks.

Nancy McCabe

KDOC

Terry Decker

KDOC

Walt Darling

DIVISION OF BUDGET

Harold Piddie

KDOC

D. WAYNE ZIMMERMAN

KDOC

Beth Tatauto

Kansas F.N.C.

POTENTIAL FOR INCENTIVES

| <u>Type of Firm</u> | <u>Allowed Under Current Law</u> | <u>Allowed Under Proposed Law</u> |
|--------------------------------|--|---|
| Car lots in enterprise zone | X | |
| Restaurants in enterprise zone | X | |
| Tire recapping | X | |
| Wholesale parts store | X | |
| Small-to-medium meat lockers | X | |
| Ready-mix concrete plant | X | |
| Lumber yard or supply | X | |
| Feed mills (small) | X | |
| Aircraft manufacturer | X | X |
| Petroleum refinery | X | |
| Portland cement manufacturing | X | X |
| Major meat-packing plant | X | X |
| Machine shops | X | |

Attachment I
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79-32,154. Same; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feed lot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). basic
Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, basic
and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, basic
the portion employed by the taxpayer in the operation of a revenue producing enterprise basic
shall be considered a qualified business facility, if the requirements of

paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a ~~revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical~~ revenue producing enterprise, as defined in subsection (i), at such facility.

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(c) "Revenue producing enterprise" shall mean: (1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

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(2) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(3) the feeding of livestock at a feed lot;

(4) the operation of laboratories or other facilities for scientific, agricultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the promotion of tourism activities.

~~(6) the administrative management of~~ any of the foregoing activities; or

(7)

~~(7) any combination of any of the foregoing activities.~~

(8)

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (1) A regular, full-time basis; (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (3) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable year. If the

For purposes of this subsection, at least 51% of the gross income generated by the foregoing activities shall be derived from the sale of products or services to out-of-state consumers in order for each of the activities to constitute a basic revenue producing enterprise.

qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(e) "Qualified business facility investment" shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calen-

dar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility. basic

(g) "Qualified business facility income" shall mean the Kansas taxable income, as defined in article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income, computed in accordance with article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and

the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S.A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) "Related taxpayer" shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership or association" shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) "Same or substantially identical revenue producing enterprise" shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities pro-

duced, sold, performed or conducted in another revenue producing enterprise.

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Good afternoon Mr. Chairman and members of the committee. My name is Terry Denker and I am Director of Policy Analysis and Research for the Department of Commerce. Following testimony provided by Secretary Priddle during yesterday's hearing, we were asked to provide any proposed amendments to SB470 that might clarify concerns the department has towards the affects on our duties and responsibilities.

Attached is a list of proposed amendments which will allow the Department of Commerce to continue to serve all business concerns in the state yet re-enforce the intent of promoting and developing the basic enterprises in Kansas. The changes are recommended for the following line items:

Section 3:

Line 0084: remove "Kansas basic"

Line 0085: remove "Kansas basic"

Line 0095: remove "Kansas"

Line 0096: remove "basic"

Section 4:

Line 0128: leave "private business" in and remove "Kansas"

Line 0129: remove "basic enterprises"

Line 0198: leave in "private enterprise" and add "and" immediately after

Section 6:

Line 0288: leave "business" in and remove "industrial"

*Attachment III
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Section 8:

Line 0311: remove "Kansas basic"
Line 0314: remove "Kansas basic"
Line 0321: remove "Kansas basic"

Section 9:

Line 0326: remove "Kansas"
Line 0327: remove "basic"
Line 0328: remove "Kansas basic enterprise has the
meaning ascribed thereto"
Line 0329: remove "by Section 2 and" and also "Kansas
basic"
Line 0331: remove "Kansas"
Line 0332: remove "basic"
Line 0363: remove "Kansas basic"
Line 0364: remove "Kansas basic"
Line 0368: remove "Kansas basic"
Line 0372: remove "Kansas basic"
Line 0376: remove "Kansas basic"
Line 0391: remove "Kansas basic"
Line 0410: remove "Kansas basic"

Section 10:

Line 0423: remove both references to "Kansas basic"
Line 0424: remove "basic"
Line 0427: remove "basic"
Line 0430: remove "Kansas basic"
Line 0433: remove "Kansas basic"

While these changes may seem cumbersome, we believe they will allow the Department to continue to provide service to all

business enterprises within the state. We recognize the strong commitment toward basic enterprises that this bill intends to promote and we feel the changes proposed do not diminish that intention.